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ABSTRACT

Despite privacy concerns, school administrators are feeling pressure to adopt urgent measures to keep drugs and alcohol from further endangering our youth's well-being and undermining staff performance. This urgency is reinforced by a national anti-drug campaign and Congressional passage of the Drug-Free Workplace Act (1988) and the Drug-Free Schools and Communities Act (1986, with 1989 amendments) tying institutional compliance to federal funding eligibility requirements. Drug testing raises issues pertaining to the First and Fourteenth Amendments. Although an earlier appellate court case upheld the need for a "factual basis" of suspicion before subjecting a teacher to urinalysis, two 1989 U.S. Supreme Court cases involving public employees ruled that public safety considerations outweighed privacy and individualized suspicion requirements. Attempts to pretest student athletes raise the issue of whether extracurricular activities are rights or privileges. Also, urinalysis and breathilizer tests can inaccurately reflect an individual's use or abuse of a controlled substance, particularly marijuana. According to one case analysis, school officials have no authority to regulate offcampus conduct having no bearing on properly maintaining the educational process. Mandatory urinalysis should be based only on individualized suspicion and satisfy both prongs of the T.L.O. v. New Jersey test for search and seizure constitutionality (i.e., reasonable suspicion and appropriate circumstances). Various drug education and prevention measures are recommended. (Nine references) (MLH)

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DRUG TESTING

By Amy Klauke and revised by Magaret Hadderman

The issue of drug testing in schools galvanizes emotions about both civil liberties and moral obligations. Our educational institutions must be committed to respect for student and staff privacy. Yet school administrators are feeling pressure to adopt urgent measures to keep drugs and alcohol from further endangering the physical, emotional, and mental well-being of our youth.

What is the current status of drug use in the schools?

The rate of drug use among teenagers is higher in the United States than in any other industrial society. Sixty-one percent of high school seniors have tried drugs (Lewis 1987), and 20 percent (3.3 million) of 14- to 17-year-olds have serious drinking problems. Drunk driving remains the primary cause of death among teenagers. Schools suffer from the subsequent loss of concentration, determination, and social skills among both students and staff members who are substance abusers.

Many school officials claim that their responsibility "to ensure that employees and students report fit for duty" (Lewis) obligates them to implement severe measures for the detection and punishment of drug users.

These claims are reinforced by a national anti-drug campaign and Congressional passage of the Drug-Free Workplace Act of 1988 and the Drug-Free Schools and Communities Act of 1986 (and 1989 amendments) tying institutional compliance to federal funding eligibility requirements. The 1989 legislation added $173 million for drug abuse prevention programs aimed at school districts in disadvantaged areas (Penning 1990).

What legal questions arise when schools consider drug testing?

Drug testing raises issues that pertain to both the Fourth Amendment, which protects citizens from unreasonable search and seizure (judges have found drug testing to constitute such a search), and the Fourteenth Amendment, which requires that citizens be treated as innocent until proven guilty and be accorded due process of law when accused.

In *Patchogue-Medford Congress of Teachers v. Union Free School District*, the state appellate panel held that "there must be some degree of suspicion before the dignity and privacy of a teacher may be compromised by forcing the teacher to undergo a urine test." In other words, there must be a "factual basis" for suspecting a particular teacher of using illegal drugs. Paradoxically, such an accumulation of evidence would usually preclude the necessity for testing body fluids. The court did concede that drug testing restrictions may soften in situations where an employee's substance use might endanger the public.

In two 1989 cases (*Skinner v. Railway Labor Executives Association* and *National Treasury Employees Union v. Von Rabb*) involving public employees, the U.S. Supreme Court ruled that public safety interests outweighed privacy and "individualized suspicion" requirements (Sendor 1989). These "special needs" cases may have implications for policies concerning school employees with "diminished expectations of privacy," such as school bus drivers (Allred 1989).

In *Odenheim v. Carlstadt-East Rutherford Regional School District*, the court held that drug testing as a part of mandatory physical exams was "an attempt to control student discipline under the guise of medical procedure." Attempts to pretest athletes raise the issue of whether extracurricular activities are rights or privileges.

In *Schail v. Tippecanoe County School Corporation* (1988), a federal district court ruled that a drug analysis program for student athletes was justified by the school's "legitimate need to ensure drug-free athletes" (Gittins 1988). In this ruling, participation in interscholastic athletics was considered a privilege, not a "property" or "liberty" interest protected by the Fourteenth Amendment—especially since the testing program preserved confidentiality, lacked criminal repercussions, and prohibited sports participation only after repeated offenses.

Because metabolisms differ, and results are influenced by the time and amount ingested, urinalysis and breathilizer tests inaccurately reflect an individual's use or abuse of a controlled substance, particularly marijuana. Instances can occur, as in *Jones v. McKenzie*, in which a positive urinalysis test cannot be confirmed by an alternative testing method.

According to Eugene A. Lincoln's (1989) analysis of three hypothetical cases, school officials have no authority or responsibility to regulate offcampus conduct with "no bearing on the proper maintenance of the educational process." A student's observed conduct on school premises is more important

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than where that student used marijuana or other drugs. Mandatory urinalysis should be based only on individualized suspicion and should satisfy both prongs (reasonable suspicion and appropriate circumstances) of the *T.L.O. v. New Jersey* test for search and seizure constitutionality. School administrators would also be wise to use less intrusive measures, such as searching a suspected student's locker or personal belongings.

How might drug testing be applied in a fair, economical, and legally safe manner?

Although any testing procedure risks charges of defamation, invasion of property, infliction of emotional distress, or wrongful discharge, several precautions can reduce the dangers for schools determined to test constituents for drug use.

Extensive involvement (including education about drug and alcohol abuse) by parents, community, school board members, teachers, staff, and students in planning a drug policy goes a long way toward preventing future court cases. Voluntary, nondisciplinary procedures should be encouraged, with rules and punitive actions clearly and publicly stated. Advice from a school board's legal counsel is recommended before implementation.

Prescreening and, when evidence warrants, individualized testing by a reliable, independent medical agency remain the least objectionable methods of testing for substance abuse. Positive results should be proceeded by followup tests, hearings, reviews held within a reasonable timespan, and punitive or rehabilitative measures.

How might drug testing affect student attitudes?

For some students, testing followed by nonpunitive, rehabilitative action may come as a respite from out-of-control behavior. As Brian Mittman (1987) asserts, "Teenagers who are weak enough to fall victim to drug abuse generally are incapable of dealing with it." Others may appreciate the removal of temptation.

On the other hand, most adolescents grow through a period of reshaping identity, experimenting, challenging, and taking risks. What might have been passing curiosity or mild rebellion should not be construed as evidence of deviance in character. A negative public image can irreparably damage a teenager's self-identity and self-esteem.

What are some alternatives to drug testing in the schools?

According to Michael Buscemi (1985), "research has demonstrated repeatedly that short-term programs and those that rely exclusively on information about drugs and alcohol are not effective." Effective policies tend to be both preventative and ameliorative, long-term and comprehensive. They involve curriculum and sometimes organizational changes and are nourished by a broad base of input and support.

Many authorities believe youthful substance abuse is symptomatic of high stress and a dearth of coping skills. Schools might alleviate the motivation for substance abuse by strengthening students' personal skills and peer support systems, providing appealing extracurricular activities, emphasizing health promotion, and encouraging drug-free lifestyles among their staff and student bodies.

Adult examples of positive stress management and body care can contribute significantly to a student's cultivation of similar life habits. So can celebrity testimonies and classroom discussions probing the glamorization of alcohol and drugs by the popular media.

RESOURCES

Allred, Stephen. "Recent Developments in Drugs in the Workplace." SCHOOL LAW BULLETIN 20,3 (Summer 1989): 1-6. EJ 396 228.

Bozeman, William C., and others. "Drug Testing in Schools: Implications for Policy." UPDATING SCHOOL BOARD POLICIES 18, 3 (March 1987): 1-3. ED 280 145.

Buscemi, Michael. "What Schools Are Doing to Prevent Alcohol and Drug Abuse." SCHOOL ADMINISTRATOR 42,9 (October 1985): 11-14. EJ 329 597.

Gittins, Naomi E., ed. FIGHTING DRUGS IN THE SCHOOLS: A LEGAL MANUAL. Alexandria, Virginia: National School Boards Association, 1988. 143 pages. ED 020 596.

Lewis, John, and others. DRUG AND ALCOHOL ABUSE IN THE SCHOOLS: A PRACTICAL POLICY GUIDE FOR ADMINISTRATORS AND TEACHERS ON HOW TO COMBAT DRUGS AND ALCOHOL. Topeka, Kansas: National Organization on Legal Problems of Education, September 1987. 44 pages. ED 281 304.

Lincoln, Eugene A. "Mandatory Urine Testing for Drugs in Public Schools and the Fourth Amendment: Some Thoughts for School Officials." JOURNAL OF LAW AND EDUCATION 18 (Spring 1989): 181-8. EJ 392 024.

Mittman, Brian Noal. "This Student's Surprising Plea: Make Drug Testing Mandatory for Your Teenage Students." THE EXECUTIVE EDUCATOR 9,5 (May 1987): 36.

Penning, Nick. "New Support for the Drug Fight." SCHOOL ADMINISTRATOR 47,3 (March 1990): 32-33.

Sendor, Benjamin. "New Rulings Suggest Ground Rules for Drug Tests." AMERICAN SCHOOL BOARD JOURNAL 176 (June 1989): 12-13.

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